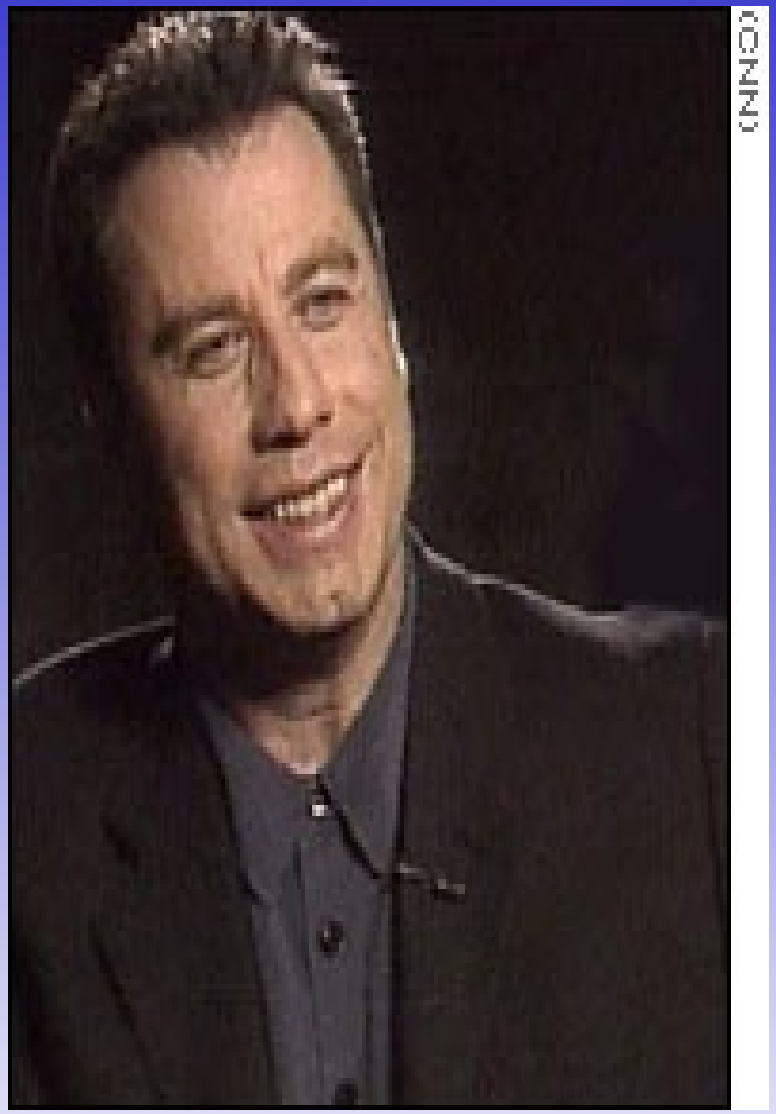
Clean Air Act

Environmental Protection Agency Enforcement

United States Army Alaska



United States Army Alaska

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Objective

Provide installation or base level attorneys with information to assist in responding to EPA Clean Air Act enforcement actions

United States Army Alaska

Why should an installation attorney care about CAA enforcement?
It could happen to you, too!

United States Army Alaska

Fort Wainwright's Power Plant

Built in 1954, boilers designed for particulates to go up the stack

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Joe DiMaggio weds Marilyn Monroe

Jan 14. The Yankee Clipper has set out on the sea of matrimony with beautiful movie actress Marilyn Monroe. Former center fielder Joe DiMaggio and Miss Monroe were wed this afternoon in San Francisco City Hall. It is a second marriage for both.

Miss Monroe, born in Los Angeles as Norma Jean Baker, has starred in "Niagara" and "How to Marry a Millionaire." DiMaggio, a San Francisco native, was voted American League Most Valuable Player in 1939, 1941 and 1947. He retired in 1951 with a .325 average, 2,214 hits, 361 home runs and 1,537 runs batted in. The eighth of nine children of a fisherman, he now co-owns an eatery on Fisherman's Wharf. His business partner was best man at the wedding.

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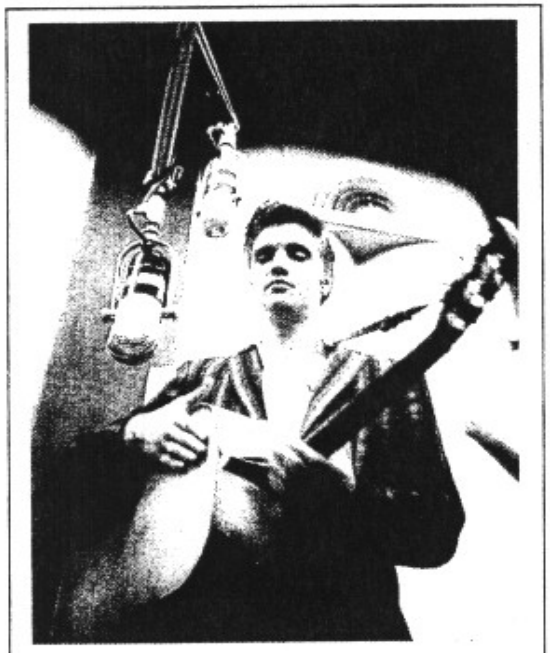

Jan 4. To celebrate turning 19 today, an obscure singer named Elvis Presley brought his guitar to a Memphis studio and paid $4 to record "Casual Love" and "I'll Never Stand in Your Way."

United States Army Alaska

McCarthy tackles Army

McCarthy (far right), in bringing charges against the Army, may finally have overstepped his bounds. The hearings will be televised starting next month.

Feb 25. Senator Joseph R. McCarthy, turning his investigation of alleged Communists in the government from the State Department to the Army, has set the stage for a major confrontation with the Department of the Army and indirectly with the White House.

Army Secretary Robert T. Stevens initially ordered high-ranking Army officers to ignore summons to appear before the senator's investigating subcommittee. He issued the order after he found that McCarthy, in a one-man hearing, had browbeat Brigadier General Ralph W. Zwicker, commander of Camp Kilmer in New Jersey. The much-decorated general had been called before the panel to answer questions as to who had promoted and given an honorable discharge to Major Irving Peress, an Army dentist who the senator accused of having been a Communist. When Zwicker, following orders, declined to answer questions, McCarthy told Zwicker "you are a disgrace to the uniform."

After a meeting with Republican members of the McCarthy subcommittee, arranged at White House instigation, Stevens did an abrupt about-face. In a "Memorandum of Understanding," Stevens agreed to let Army officials testify before the McCarthy panel on the Peress promotion and discharge.

When the agreement was interpreted as an Army surrender to McCarthy, Stevens, sobbing with rage and humiliation, threatened to resign and went to the White House for support. In a statement endorsed by President Eisenhower, who had tried to stay aloof from the dispute, Stevens said he would never allow Army personnel to be "browbeaten" by committees (→ 3/5).

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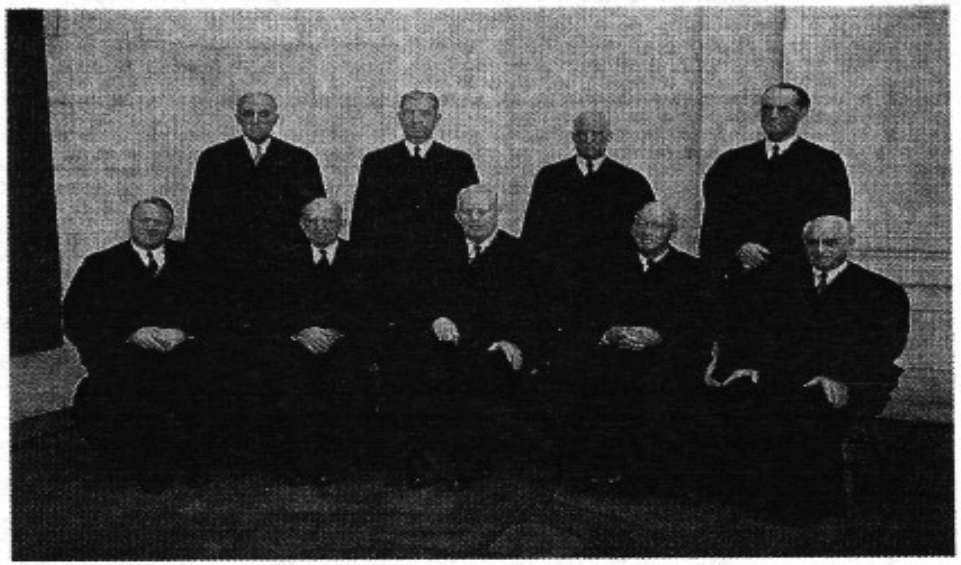
High court orders school integration

May 17. Racial segregation in the public schools of America was outlawed today by the Supreme Court. With their unanimous decision, the justices set aside the "separate but equal" doctrine handed down by an earlier Supreme Court in 1896.

Many Southerners reacted angrily to the new ruling, with some leaders in at least two states, Georgia and South Carolina, vowing that they will abolish their public schools. "The South," said Senator James O. Eastland, Democrat of Mississippi, "will not abide by nor obey this legislative decision by a political court."

The court decision could vitally affect 8.5 million white children and 2.5 million Negroes now attending segregated schools in Alabama, Arkansas, Delaware, Florida, Mississippi, Missouri, North Carolina, Oklahoma, Georgia, Kentucky, Louisiana, Maryland, South Carolina, Tennessee, Texas, Virginia, West Virginia and the District of Columbia. The ruling will not affect private schools.



Douglas, Harlan, Reed, Clark, Warren, Burton, Black, Minton, Frankfurter.

In the landmark decision, one of the most far-reaching rulings of the century, Chief Justice Earl Warren wrote: "In the field of public education, the doctrine of separate but equal has no place. Separated educational facilities are inherently unequal" (→ 6/10).

United States Army Alaska

Man who perfected zipper in 1913 dies

June 21. Dr. Gideon Sundback, one of the inventors of the zipper, died yesterday at age 74. A crude version had been designed in 1893 by W.L. Judson, but in 1913 Sundback perfected a slide fastener and the machinery for its manufacture.

The Hookless Fastener Company was incorporated that year with 20 employees. Now named Talon, Inc., it has thousands of workers. Dr. Sundback was Vice President and also President of subsidiaries in Mexico and Canada. Born in Sweden and educated as an electrical engineer there and in Germany, he emigrated to the U.S. in 1903 and became affiliated with the Westinghouse Electric Co. In 1937, Allegheny College conferred upon him the degree of Doctor of Science.

United States Army Alaska

Fort Wainwright Power Plant
State NOV and Army Response

- 1994 AK Department of Environmental Conservation issues an NOV identifying opacity and monitoring deficiencies
- Negotiations do not culminate in a final Compliance Order by Consent
- Necessary milcon requested by Army and approved by congress for FY00 ($15M+)
- Compliance schedules submitted in Title V application Dec 1997

U.S. EPA
IN THE MATTER OF:
U.S. Army Alaska
Fort Wainwright
Notice
of
Violation
March 1999

United States Army Alaska

What is the EPA NOV?

- Jurisdictional prerequisite CAA Section 113
- Probably not a complete surprise
- At least a 30 day wait until complaint can be filed, so may provide opportunity for settlement discussions
- May be in conjunction with Compliance Order

“The NOV Netherworld”

- EPA Region will likely be under significant pressure from HQEPA to file the complaint as soon as possible
- Political activity intensifies, PAO issues
- Opportunity to develop lines of communication within your legal channels

Complaint

- Initiates formal administrative hearing process governed by CROP 40 CFR Part 22, 64 Fed. Reg. 40138 (July 23, 1999)
- No need to identify penalty sought
- Ex parte discussion rules apply
- ADR/informal settlement

Answer & Affirmative Defenses

- Economic Based Penalties
- Due Process
- Necessary parties
- Equitable defenses
- Davis-Monthan AFB, 1999 EPA ALJ LEXIS 99 (Nov. 19, 1999).
- Harmon "overfiling" argument, 191 F.3d 894 (8th Cir. 1999)
- Lyons "duration" argument, 1998 EPA ALJ LEXIS 68 (Aug. 21, 1998), rev'd 1999 EPA App. LEXIS 26 (Aug. 26, 1999)

Special Approvals

- To seek larger penalties or penalties relating to older violations in administrative hearings, EPA Administrator and the US Attorney General must jointly determine hearing is appropriate (CAA Section 113(d)(1))
- EPA policy is that region must provide the Federal Facilities Enforcement Office Director justification if seeking penalties for violations occurring prior to July 16, 1997 (date of OLC opinion regarding recovery of CAA penalties)

Economic Based Penalties, or . . DoD as a Fortune 500 Company

- EPA mantra "we have to treat you just like any other person"
- US EPA Office of Enforcement and Compliance Assurance (OECA) CAA Penalty Guidance (23 JUL 95 CAA Stationary Source Civil Penalty Policy & 9 OCT 98 Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the CAA)
- OECA 30 SEP 99 Guidance on Calculating the Economic Benefit of Noncompliance by Federal Agencies

Practical Considerations: Alternative Resolution Mechanisms

- Pursue formal ADR (EPA ALJ) as part of administrative hearing process?
- Seek Office of Legal Counsel opinion?
- Seek Comptroller General opinion?

Practical Considerations: Negotiating a Settlement

- Impact of Section 8149, FY 2000 Defense Appropriations Act
- Who will be involved? EPA and the state?
- Think Supplemental Environmental Projects
- If EBPs are involved, may preclude SEP offsets (October 4, 1998 OECA Final SEP Policy)

Practical Considerations: Ongoing Relationship with EPA/State

- Who's the regulator? Does the state's opinion really matter?
- Who's negotiating/administering Title V Operating Permits?
- Who's providing regulator feedback on compliance projects?

Contact Information

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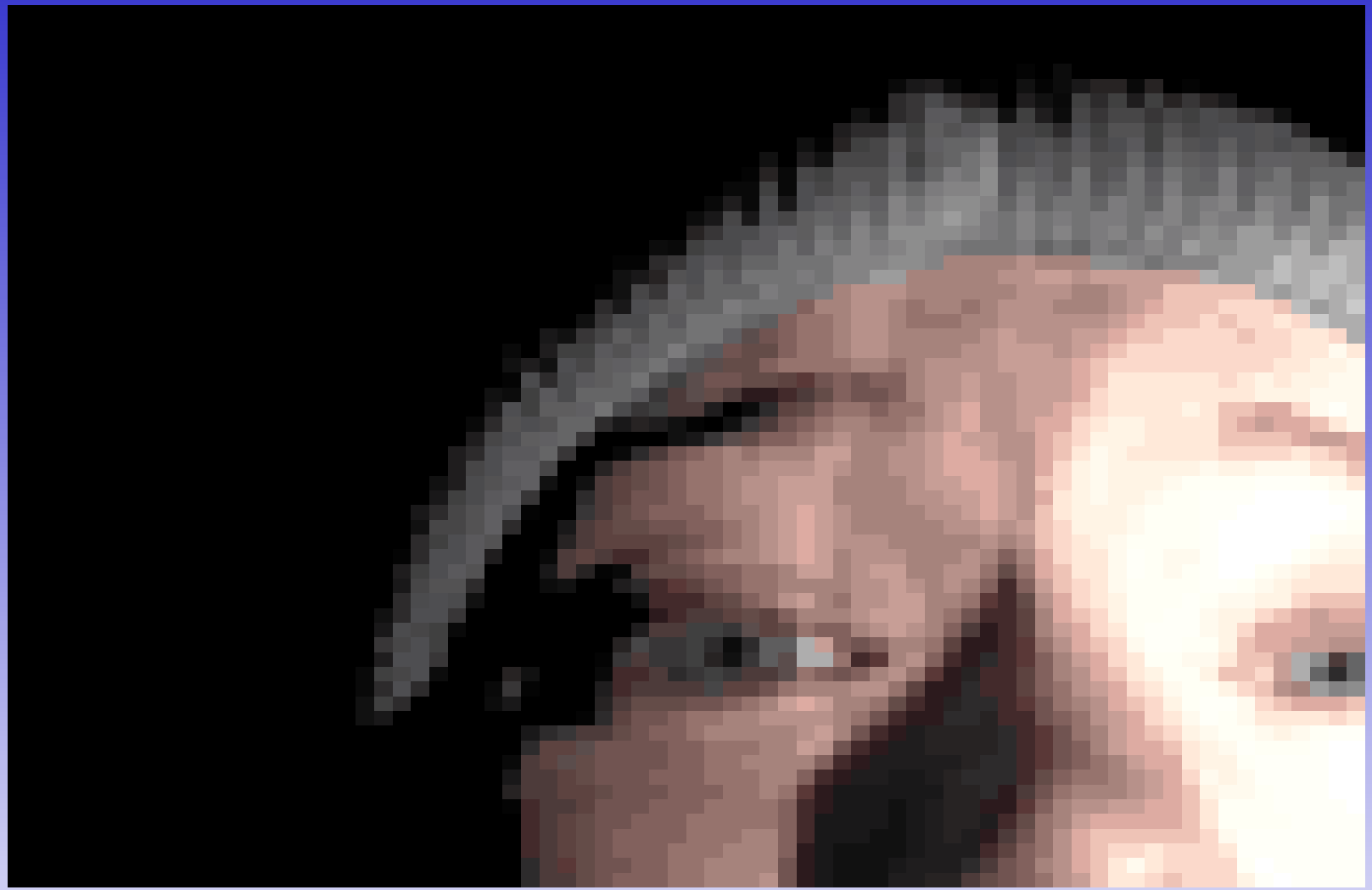

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